IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1063 of 1988

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAH CHANDULAL UJAMSINH - Petitioner(s)

Versus

MUSTANSHIR AHMEDALI KADWAVALA - Respondent(s)

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Appearance :
MR BP GUPTA for MR YN OZA for Petitioner No(s).: 1.
Respondent No(s).: 1 SERVED.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 26/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 4th May, 1988 passed by the learned Joint District Judge, Panchmahals at Godhra, the appellant (defendant in Regular Civil Suit No.104/1982) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The respondent-plaintiff is the owner of the suit shop bearing Municipal Census No.5/625 situated at Godhra. The suit shop was leased to the petitioner-defendant for a monthly rent of Rs.50=00. As the defendant was in arrears of rent since 1st July, 1979, on 18th April, 1981 the plaintiff gave notice of demand as envisaged by Section 12(2) of the Rent Act and also notice of termination of the tenancy. In spite of the receipt of the said notice the defendant failed to pay the amount of rent due. The plaintiff, therefore, instituted Regular Civil Suit No.104/1982 in the Court of learned Civil Judge (J.D.), Godhra. The plaintiff prayed for a decree for eviction on the grounds that the defendant was a tenant in default; that he had unlawfully sublet or transferred the suit shop; and that the defendant had made permanent alterations in the suit shop. The suit was contested by the defendant vide written statement Exh.16. He denied the allegations made in the plaint. It was stated that the rent of Rs.50=00 included the house tax and the water tax. He also challenged the locus standi of the plaintiff to bring the suit against the defendant. The learned Civil Judge, by the judgment and order dated 30th August, 1983, held that the defendant was in arrears of rent for six months and

more; that the rent was payable by the month and that the defendant had unlawfully sublet the suit shop. The learned Civil Judge was, therefore, pleased to pass decree for eviction in favour of the plaintiff. Feeling aggrieved, the defendant preferred Regular Civil Appeal No.158/1983 in the Court of learned District Judge, Panchmahals. The learned Joint District Judge reversed the finding as to the unlawful subletting; however, confirmed that the defendant was a tenant in default and that he was not ready and willing to pay the rent. The lower appellate Court was of the opinion that the monthly rent did not include the education cess levied by the local authority and that the defendant was liable to pay the education cess to the local authority. The defendant was, therefore, protected by Section 12(3)(b) of the Rent Act. The lower appellate Court also found that the defendant had failed to comply with the conditions mentioned in Section 12(3)(b) of the Rent Act and had thus forfeited right to protection against eviction. Accordingly, the decree for eviction was confirmed. Therefore, the present Revision Application.

Mr.Gupta has submitted that in answer to the summons of the Civil Court the defendant had deposited a sum of Rs.1,900=00 in the Court and that he had continued to

deposit the rent in the Court. Pending the Appeal also the defendant had made deposit in the Court and had paid all the arrears by the date of the decision. He has submitted that in view of the amendment to Section 12(3)(b) of the Rent Act by Gujarat Act No.7 of 1985 the defendant was not obliged to deposit the rent regularly. The defendant was, therefore, entitled to protection under Section 12(3)(b) of the Rent Act. The lower appellate Court has erroneously passed a decree for eviction against the defendant.

I am unable to agree with Mr.Gupta. Prior to its amendment by Act No.7 of 1985 Section 12(3)(b) of the Rent Act provided that no order of eviction shall be passed against a tenant if (1) on the first day of hearing of the suit he deposits the amount of standard rent and permitted increases then due and; (2) thereafter continues to pay or tender the rent in the Court regularly. Since its amendment by Gujarat Act No.7 of 1985 the word “regularly” has been omitted. The Division Bench of this Court has, in the matter of **Bai Sakarbhai Devraj v/s. Ibrahim Abdul Ganibhai Pankhida** [1994(2) GLR 1091], considered the effect of the said amendment by Gujarat Act No.7 of 1985. The Bench has held that the

said amendment is prospective in its application and shall not apply to the pending suits. In the present case as the suit was instituted in the year 1982 Section 12(3)(b) of the Rent Act as it stood prior to its amendment shall apply. Thus, the defendant was not only liable to pay or deposit the amount of rent due on or before the first day of hearing of the suit but he was also under an obligation to pay the rent regularly thereafter. The lower appellate Court has considered the deposits made by the defendant in detail and has found that the defendant did not deposit the rent regularly and was always in arrears of rent. In view of the said finding the decree for eviction was inevitable.

No case for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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